

## **MINUTES**

### **TENNESSEE BOARD OF MEDICAL EXAMINERS**

**May 18 and 19, 2004**

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The meeting was called to order at 8:45 a.m., in the Cumberland Room, Ground Floor of the Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37247-1010, by President Dr. David Cunningham. Other members present were: Drs. Charles White, Subhi Ali, Sam Barnes, Allen Edmonson, Barbara Engelhardt, George Eckles, Mr. Mark Brown, Ms. Nina Yeiser and Ms. Mary Johnson. Absent member was Dr. Mitchell Mutter. Staff present included: Rosemarie Otto, Executive Director, Marsha Arnold, Unit Manager, Sandra Powell, Administrator, Dr. Larry Arnold, Board Consultant and Nick Aemisegger, Advisory Attorney.

#### **Minutes**

Minutes from the March 16 and 17, 2004, April 1, 2004, April 8, 2004 Teleconference, April 21, 2004 Teleconference and May 5, 2004 Teleconference meetings were reviewed. Corrections were made to the March 16 and 17, 2004 minutes. Mr. Jerry Taylor's name was incorrectly listed as Mr. Jerry Floyd. After further review, Dr. Edmonson made a motion to accept the minutes with the amendments. Dr. White seconded the motion. The motion carried unopposed.

#### **Ratification of Licenses**

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-Ray Operators, Athletic Trainers, Acupuncture Committee, Committee on Clinical Perfusionist, and Physician Assistants was reviewed by the Board. Dr. Eckles made a motion to ratify the approval of licenses and the motion was seconded by Dr. Edmonson.

Dr. White made a motion to deny the license of Ramon Guzman Lopez, MD. who did not meet the requirements for licensure pursuant to rule 0880-2-.08(2)(b)(1). The motion was seconded by Ms. Johnson. The motion carried unopposed.

#### **New Applicant Interviews**

##### **James Michael Campbell, MD**

Dr. Campbell was not present and the Board deferred his interview to the next scheduled meeting.

##### **John Thomas Gregg, MD**

Dr. Gregg is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Gregg's application file for the Board. Dr. Gregg holds a license in Texas and is in the process

of relocating to Tennessee. Dr. Arnold stated that the trend is to look closely at applicants that have considerable malpractice issues. Dr. Gregg has seven (7) cases of malpractice. Dr. White suggested more information on the cases. Dr. Ali made a motion to defer licensure approval of Dr. Gregg to the next meeting and Dr. White seconded the motion. A letter will be sent to Dr. Gregg informing him what he needs to bring to the next meeting.

### **Abdullah Yousufi, MD**

Dr. Yousufi is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Yousufi's application to the Board. Dr. Yousufi held a pharmacy license in the state of Texas in which that license was disciplined. He will be relocating to the Knoxville area. After further discussions, Dr. Cunningham suggested Dr. Yousufi to take the SPEX exam and reapply after passing. Dr. Edmonson made a motion to reconsider Dr. Yousufi's application for licensure after he takes and successfully passes the SPEX exam. Ms. Yeiser seconded the motion. Dr. White amended the motion to add obtaining continuing medical education hours. Dr. Ali seconded the motion. The motion carried unopposed.

### **Bruce Ziran, MD**

Dr. Ziran did not appear for the March meeting and was deferred to this meeting in which he did not appear. Dr. White made a motion to deny license to Dr. Ziran and the motion was seconded by Ms. Yeiser. The motion carried unopposed.

### **Rule Action**

Jerry Kosten, Rules Coordinator, handed out comments from the Tennessee Medical Association's proposed amendment to the medical record's rule. Mr. Kosten informed the Board the Rulemaking Hearing was held May 17, and there was one comment from the University of Tennessee Medical Group. Dr. Edmonson suggested adding "to a patient" to the rule. Mr. Brown moved to accept Dr. Edmonson's changes and Dr. White seconded. Mr. Brown made a motion to adopt the rule as amended and Dr. Edmonson seconded the motion. The rule was adopted by roll call vote.

Mr. Kosten reviewed the Departmental Filing of Notice of Rulemaking Hearing on December 23, 2003 regarding disciplinary proceedings for the Acupuncture Committee. Mr. Kosten stated the Acupuncture Committee has adopted the rule and the Board would need to ratify the action. Dr. Edmonson made a motion to adopt the rule and Dr. White seconded the motion. The rule was adopted by roll call vote. Mr. Kosten stated the Board would also need to ratify the rule for disciplinary actions the Committee on Physician Assistants has adopted. Dr. Edmonson made a motion to adopt the rule and Dr. White seconded the motion. The rule was adopted by roll call vote.

The Board reviewed Public Chapter 562 of the Public Acts of 2004 regarding the seven (7) year rule. Ms. Yeiser made a motion to send a rule concerning this Chapter to rulemaking hearing and Dr. White seconded the motion. The motion passed unanimously.

## **Discussion**

Mr. Nick Aemisegger, with the Office of General Counsel reviewed the reports and explained the OGC case activity for all the boards and committees. Mr. Aemisegger stated the Board of Medical Examiners has over one-hundred (100) complaints in OGC.

Ms. Arnold reviewed Public Chapter 872 which instructs the Department of Health to encourage appropriate physicians and health care providers to educate patients about the risks of gynecological cancers and the benefits of early detection.

Mr. Kraemer reviewed Public Chapter 575 concerning independent reviewer to the Board. Mr. Kraemer stated the Board needed to designate a reviewer. Ms. Johnson made a motion to designate Dr. Larry Arnold as reviewer and Dr. White seconded the motion. The motion carried unopposed.

Ms. Robbie Bell, Director for Health Related Boards, reviewed the Response to Sunset Review Committee requesting changes in Guidelines for Disciplinary Actions. After further discussions, Dr. Edmonson made a motion to replace existing guidelines with the new ones and Ms. Yeiser seconded the motion. The motion passed unanimously.

## **Reports**

### **Budget Report**

Ms. Otto reviewed the financial report and informed the Board that the Board of Medical Examiners is progressing well and does not anticipate any fee increases.

### **Director's Report**

Ms. Otto welcomed new Board members, Dr. Subhi Ali who was present, and Dr. Michael Zanolli who was unable to attend this meeting. Dr. Roland Gray, with the Tennessee Medical Foundation introduced his new Administrator, Mr. Mike Todd to the Board. Mr. Todd stated he is a licensed A & D Counselor and gave a brief summary of his background.

Ms. Otto reported that the Board has been rated thirty-five (35) in the Public Citizen Health report, which is up from forty-eight (48) last year. Ms. Yeiser stated the reason for the rate was because there were few attorneys at the time to keep the cases going.

Dr. Barnes reported on the annual meeting of the Federation of State Medical Boards (FSMB) which was held in Washington, DC. Dr. Barnes informed members the subject of disruptive doctors was discussed. Dr. Cunningham asked Mr. Kraemer to gather information concerning disruptive doctors and to craft a rule to submit at the next scheduled meeting for adoption by the Board to send to rulemaking hearing.

## **Investigative Report**

Ms. Lea Phelps, Disciplinary Coordinator, reviewed the report from the Bureau of Investigations in Ms. Denise Moran's absence. Dr. White suggested a breakdown in the number of cases that were closed with no action. Ms. Otto explained that the majority of cases that were closed did not escalate to becoming a state problem.

## **Disciplinary Report**

Ms. Lea Phelps reviewed the disciplinary report for the Board. Ms. Phelps quoted the amount in fees collected in court costs from January 1 through May 15, 2004 was \$14,887.14.

## **Office of General Counsel Report**

Mr. Nick Aemiseggar reviewed the OGC report and informed the Board that the Office Based Surgery Rules were back from rulemaking hearing which was held on June 17, 2004.

## **"Noteworthy" section for the Internet**

The Board did not designate anything for the "Noteworthy" section of the Internet.

Adjourned for lunch at 12:00 noon and reconvened in the Cumberland Room at 1:00 p.m.

## **Disciplinary Action**

### **Cumberland Room:**

Panel: Engelhardt, Brown, White, Yeiser, Edmonson

### **Order Modification**

**George Barker, MD** - Dr. Barker was present but not represented by legal counsel. Mr. Jonathan Stephens represented the State. The Honorable John G. Hicks, Administrative Law Judge presided. Dr. Edmonson recused himself for reasons pertaining to his acquaintance with Dr. Barker. Mr. Stephens handed out the Order Removing Suspension and Continuing Probation to the panel. On June 8, 1995, Dr. Barker entered into a Consent Order with the Mississippi State Board of Medical Licensure. Dr. Barker admitted that he had developed a chemical dependency problem and had received treatment at the Pine Grove Center, Hattiesburg, Mississippi. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation spoke on behalf of Dr. Barker. Dr. Gray stated Dr. Barker has been sober for ten (10) years. After further review of the petition for Order Modification, Dr. White made a motion to accept the removal of the suspension but to continue the probation. Dr. Engelhardt seconded the motion. The motion carried unopposed.

**Don P. Stanton, PA** - Mr. Stanton was not present nor represented by legal counsel. Mr. Robert O'Connell represented the State. Mr. O'Connell handed out the Agreed Order of 2000

and the second Order Modification which was approved by the Committee on Physician Assistants on April 16, 2004. Mr. Stanton's license was placed on probation in 2000. The Order Modification approved in April, 2004 by the Physician Assistant Committee extended the probationary period for two (2) years because the original Agreed Order was not complied with. Dr. Edmonson made a motion to accept the Order Modification and Mr. Brown seconded the motion. The motion carried unopposed.

### **Agreed Order**

**Charles Morgan, MD** - Dr. Morgan was present and represented by legal counsel, Mr. Dan Warlick, attorney. Mr. Robert O'Connell represented the State. Mr. O'Connell handed out the Notice of Charges and Agreed Order to the panel for review. Dr. Morgan is in violation of TCA 63-6-214(b)(1) and TCA 63-6-214(b)(13). The Agreed Order states that Dr. Morgan's license to practice medicine in Tennessee is placed on probation for a period of five (5) years, commencing with the effective date of the Order. Dr. Morgan must attend a three day course entitled: "*Prescribing Controlled Drugs*", at "The Center for Professional Health" at Vanderbilt University Medical Center, in Nashville, Tennessee, or equivalent course approved by the Board, and provide the Board proof of attendance within six (6) months from the date of entry of the Agreed Order. Dr. Morgan must attend a three day course entitle: "*Maintaining the Proper Boundaries*", at "The Center for Professional Health" at Vanderbilt University Medical Center, in Nashville, Tennessee, or equivalent course approved by the Board, and provide the Board proof of attendance within six (6) months from the date of the entry of this Agreed Order. Dr. Morgan will create and maintain accurate records on all patients. Those records will be available for inspection by agents of the Department during the period of the probation. No sooner than five (5) years from the date of the entry of the Agreed Order, Dr. Morgan must make a personal appearance and petition the Board for an Order modifying the probationary status of his Tennessee medical license. At such time, Dr. Morgan must show that all conditions on his Tennessee medical license have been maintained throughout the probationary period. Dr. Morgan must pay court costs before the expiration of the probationary period. Dr. Engelhardt made a motion to accept the Agreed Order as written. Dr. White seconded the motion. The motion carried unopposed.

**Mark N. Hendrixson, MD** - Dr. Hendrixson was present and represented by legal counsel, Mr. Gayle Malone, Jr. Mr. Robert O'Connell represented the State. The Notice of Charges and the Agreed Order was handed out to the panel for review. Dr. Hendrixson is in violation of TCA 63-5-101 and TCA 63-6-214(b)(2). The Agreed Order states that Dr. Hendrixson's Tennessee medical license is to be suspended for one (1) year that the suspension is to be stayed during the term of his probation and not to be put into effect unless the Board is notified of any further Medical Practice Act violation. Dr. Hendrixson's medical license is placed on a new period of probation, for five years, commencing with the effective date of the Order. He is to enter into a five year contract with the Tennessee Medical Foundation with frequent periodic drug screens as a requirement of that contract to obtain a lifetime advocacy with them. No sooner than five (5) years from the effective date of the Order, Dr. Hendrixson must make a personal appearance and petition the Board for an Order modifying the probationary status of his Tennessee medical license. He must show that all conditions on his Tennessee medical license have been maintained throughout the probationary period. Dr. White made a motion to accept the Agreed Order as written and Dr. Engelhardt seconded the motion. The motion carried unopposed.

## **Contested Case Hearing**

Panel: White, Yeiser, Engelhardt

**Michael Birdsong, MD** - Dr. Birdsong was not present nor represented by legal counsel. Mr. Robert O'Connell represented the State. The Honorable Lynn England, Administrative Law Judge presided. Mr. O'Connell moved for a default and provided documentation of notification. Dr. Birdsong is in violation of TCA 63-5-101, TCA 63-6-214(b)(2), TCA 63-6-214(b)(5), TCA 63-6-214(b)(10), TCA 63-6-214(b)(18), TCA 63-51-101, TCA 63-51-105(a)(1), 63-51-117(a), 63-51-118, and TCA 63-6-101. Dr. White moved for motion of default and Dr. Engelhardt seconded the motion. Dr. White made a motion to hear the facts and Dr. Engelhardt seconded the motion. Dr. White made a motion to accept the Findings of Fact. Dr. Engelhardt seconded the motion. The motion carried unopposed. Dr. Engelhardt made a motion to accept the Conclusions of Law and Dr. White seconded the motion. The motion carried unopposed. Dr. White made a motion to accept the default to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Engelhardt seconded the motion. The motion carried unopposed. Dr. White made a motion to revoke the medical license of Dr. Birdsong as soon as possible and assess all costs of the hearing. Dr. Engelhardt seconded the motion. The motion carried unopposed.

## **Magnolia Room:**

Panel: Cunningham, Barnes, Johnson, Eckles, Ali

## **Agreed Order**

**Ralph Bard, MD** - Dr. Bard was present and represented by legal counsel, Mr. Jerry Scott. Ms. Shirley Corry represented the State. The Honorable Steve Darnell, Administrative Law Judge presided. Dr. Eckles recused himself. Ms. Corry handed out the Notice of Charges and Agreed Order to the panel for review. Dr. Bard is in violation of TCA 63-6-214(b)(1)(3) and (4), and TCA 63-6-214(b)(11). The Agreed Order states Dr. Bard's license shall be placed on probation for a period not to exceed one (1) year. Dr. Bard is restricted from performing surgical procedures of any kind in the State of Tennessee during the period of probation and is to seek the lifting of his restriction from the Board before performing any surgical procedures. Dr. Bard must attend and successfully complete a Mini Residency Program in surgical procedures and techniques. The course must be approved by the Board Consultant in advance of his attendance. Satisfactory participation is required and a written report shall be submitted to the Tennessee Board of Medical Examiners. Dr. Bard must submit a copy of the Order to the Medical Director of each facility or institution at which he has, or will have, privileges of any kind within ten (10) days of the effective date of this Order. Dr. Barnes made a motion to accept the Agreed Order as written. Dr. Cunningham, Dr. Ali and Ms. Johnson opposed. The Agreed Order failed and a contested case hearing will be set for the next scheduled meeting which will be held July 20 and 21, 2004.

**John T. Hancock, MD** - Dr. Hancock was not present nor represented by legal counsel. Mr. Joseph Schmidt represented the State. Mr. Schmidt handed out the Notice of Charges and Agreed Order to the panel for review. Dr. Hancock is in violation of TCA 63-6-214(b)(1) and

TCA 63-6-214(b)(2). The Agreed Order states Dr. Hancock's license is to be placed on probation, commencing with the effective date of the Agreed Order. Dr. Hancock shall remain on probation for a period of five (5) years. During the aforementioned period of probation, Dr. Hancock shall be allowed to engage in the practice of medicine in the State of Tennessee and shall retain all privileges incident to his Tennessee medical license. During the probation period, Dr. Hancock must enter into a contract with the Tennessee Medical Foundation and successfully maintain the advocacy with them for the duration of the aforementioned period of probation. Dr. Hancock shall not travel outside the physical boundaries of Hamblen County, Tennessee, in order to participate in any required drug testing. Dr. Hancock shall be evaluated by the Vanderbilt Comprehensive Assessment Program for Professionals within thirty (30) days of the effective date of the Order. Copies of any report(s) resulting from aforementioned evaluation shall be provided to Larry Arnold, MD, Board Consultant, and Roland W. Gray, MD, Medical Director for the TMF. Dr. Hancock must pay a maximum of one thousand dollars (\$1,000) in costs and shall be paid within the probationary period of the Agreed Order. Dr. Barnes made a motion to accept the Agreed Order as written and Dr. Eckles seconded the motion. The motion carried unopposed.

**David Krasnopolsky, MD** - Dr. Krasnopolsky was not present nor represented by legal counsel. Mr. Joseph Schmidt represented the State. Mr. Schmidt handed out the Notice of Charges, Agreed Order and Kentucky's Agreed Order to the panel for review. Dr. Krasnopolsky was licensed to practice medicine in Kentucky on July 1, 1987 and that license is currently "inactive". Dr. Krasnopolsky is in violation of TCA 63-6-101 and TCA 63-6-214(b)(20). Ms. Johnson made a motion to accept the Agreed Order as written. Dr. Eckles seconded the motion. The motion carried unopposed.

### **Order Modification**

**C. Dwayne Knight, MD** - Dr. Knight was present but not represented by legal counsel. Mr. Harry Weddle represented the State. The Honorable Steve Darnell, Administrative Law Judge presided. Mr. Weddle handed out the Agreed Order, Order Modification and the Petition for Order Modification to the panel for review. Dr. Knight is in violation of TCA 63-6-214(b)(1)(10), (12), (14) and (18). Dr. Knight stated he is applying for his DEA license and feels he has been in compliance with the Order and is asking for expansion of this privilege. Mr. Weddle cross examined Dr. Knight. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation spoke on behalf of Dr. Knight. Dr. Gray stated that Dr. Knight has attended a boundaries course at Vanderbilt. Ms. Lea Phelps, Disciplinary Coordinator reviewed for the panel the compliances Dr. Knight has accomplished. Mr. Weddle gave his closing statements. Dr. Barnes made a motion to reopen for questions and Ms. Johnson seconded the motion. Dr. Knight stated he would need his DEA number to write prescriptions for scheduled 4 and 5 drugs to students. Ms. Johnson made a motion to add 4 and 5 scheduled drugs on page 5(1c) of the Order. Dr. Barnes seconded the motion. The motion carried unopposed. Ms. Johnson made a motion to assess the cost of the Order Modification to Dr. Knight and Dr. Ali seconded the motion. The motion carried unopposed.

**Foster G. Ruhl, MD** - Dr. Ruhl was present but not represented by legal counsel. Mr. Harry Weddle represented the State. Mr. Weddle handed out the original Order Modification, Petition for Order Modification and Mississippi's Order dismissing restrictions to the panel for review. Dr. Ruhl is in violation of TCA 63-6-214(b)(20) and TCA 63-6-214(b)(14). Mr. Weddle

asked Dr. Ruhl several questions pertaining to his compliance with the Board's Order. Ms. Phelps, Disciplinary Coordinator stated Dr. Ruhl has paid all costs and reviewed and studied the Laws and Rules governing Medical Examiners. Dr. Cunningham stated that Dr. Ruhl has complied with everything the Board requested. Dr. Eckles made a motion to remove restrictions on Dr. Ruhl's Tennessee medical license. Ms. Johnson seconded the motion. The motion carried. Ms. Johnson made a motion to assess all costs of the Order Modification to Dr. Ruhl and Dr. Ali seconded the motion. The motion carried unopposed.

### **Contested Case Hearing**

**Timothy M. Ashburn, MD** - Dr. Ashburn was not present nor represented by legal counsel. Mr. Harry Weddle represented the State. The Honorable Steve Darnell, Administrative Law Judge presided. Mr. Weddle asked for a Default and handed out original letters mailed to Dr. Ashburn and returned mail receipts. Dr. Ashburn is in violation of TCA 63-6-101 and TCA 63-6-214(b)(1),(2), (3), (5) and (12). Mr. Weddle stated every attempt to contact Dr. Ashburn has been unsuccessful and asked the Board to move for default status. Dr. Ashburn's Tennessee medical license was retired before disciplinary proceedings could take place. Dr. Eckles made a motion to accept the Default and Dr. Barnes seconded the motion. The motion carried unopposed. Mr. Weddle made an opening statement in which he handed out the Notice of Charges and Memorandum for Assessment of Civil Penalties to the panel for review. Mr. Weddle called his first witness, Ms. Margaret West, Investigator for Health Related Boards in Shelby County, Tennessee. Ms. West stated she had received a complaint on Dr. Ashburn in September, 2000 on allegations that he was writing prescriptions in other people's name. In his closing statements, Mr. Weddle asked the Board to revoke Dr. Ashburn's medical license and to assess all costs to Dr. Ashburn. Dr. Eckles made a motion to accept the Finding of Facts. Ms. Johnson seconded the motion. The motion carried unopposed. Dr. Barnes made a motion to accept the Causes of Action and Dr. Eckles seconded the motion. Dr. Eckles made a motion to revoke Dr. Ashburn's Tennessee medical license and to assess all costs of the hearing to him. Ms. Johnson seconded the motion. The motion carried unopposed. Dr. Cunningham read the policy statement. Dr. Eckles made a motion to accept the order to protect the health, safety and welfare of the citizens of the State of Tennessee. Ms. Johnson seconded the motion. The motion carried unopposed.

Adjourned at 5:36 p.m.

**May 19, 2004**

### **Cumberland Room:**

Panel: Edmonson, White, Yeiser

### **Agreed Order**

**Peter Thomas Gardner, MD** - Dr. Gardner was not present but represented by legal counsel, Barry E. Weathers. Mr. Robert O'Connell represented the State. Mr. O'Connell handed out the Notice of Charges and Agreed Order of Voluntary Surrender to the panel for review. Dr. Gardner is in violation of TCA 63-6-214(b)(1), (2), (3), (5), (12), (13), and (18). The Agreed Order states



that Dr. Gardner will immediately voluntarily surrender his license to practice medicine in Tennessee and may not apply for reinstatement to practice until the passage of at least one (1) year from the date of the Order. Before making any such application, Dr. Gardner shall have completed the drug treatment program, contacted the Tennessee Medical Foundation and obtained advocacy (lifetime), and have resolved any and all criminal charges arising out of the facts which were the subject of the Order of Summary Suspension. Dr. White made a motion to accept the Agreed Order. Dr. Edmonson seconded the motion. The motion carried unopposed.

### **Letters of Reprimand**

**Elizabeth D. Billings, MDX** - Ms. Billings was not present. Mr. Joseph Schmidt represented the State. Mr. Schmidt handed out the letter of Reprimand to the panel for review. Ms. Billings practiced as a medical x-ray operator in a physician's office before she was certified by the Board. Dr. Edmonson suggestion was for the Board to reprimand the Physicians who are responsible for the violations of the x-ray operators when they are not certified. Dr. White and Ms. Yeiser also agreed. Dr. Edmonson made a motion to accept the Letter of Reprimand. Dr. White seconded the motion. The motion carried unopposed.

**Eric L. Jordan, Non-Certified MDX** - Mr. Jordan was not present. Mr. Joseph Schmidt represented the State. Mr. Schmidt handed out the Letter of Reprimand to the panel for review. Mr. Jordan performed x-ray procedures from March, 2002 through September, 2002 without being certified by the Board. Mr. Jordan is now in the process of applying for the required Tennessee X-Ray Operator Certification. Dr. Edmonson made a motion to accept the Letter of Reprimand. Dr. White seconded the motion. The motion carried unopposed. Dr. White made a motion to adjourn and Dr. Edmonson seconded the motion.

Adjourned at 9:45

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Dr. Allen S. Edmonson, Secretary

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Date

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